United States Department of Labor
Employees' Compensation Appeals Board

E.A., Appellant	)	
and	)	**Docket No. 17-0330**
	)	**Issued: December 12, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Salisbury, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 30, 2016 appellant filed a timely appeal from a September 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on August 3, 2016, as alleged.

FACTUAL HISTORY

On August 23, 2016 appellant, then a 50-year-old medical technician, filed a traumatic injury claim (Form CA-1), alleging that he sustained a pulled muscle and possible ligament strain of his right lower extremity on August 3, 2016 as a result of getting caught on the wheel of a

[1] 5 U.S.C. § 8101 *et seq.*

scooter while in the performance of duty. He stated that he was entering the door of the front desk of the phlebotomy area where a coworker had parked her scooter just inside the door. Appellant indicated that he walked in the door and caught his right foot on the wheel of the scooter twisting his right foot and leg. He stopped work that same day.

By an August 25, 2016 development letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted the position description for his medical technician position and an August 3, 2016 report of emergency treatment releasing him to return to full duty with an "excuse for the two hours he was in employee health."

In an August 3, 2016 report, a registered nurse indicated that, at 12:45 p.m., appellant stated that he "twisted his foot while directing a patient to leave the lab, his foot ran into the scooter." Upon physical examination, the nurse found full range of motion, no redness, no swelling, and noted that appellant was wearing closed-toed sneakers.

In an August 4, 2016 report, Dr. Nomita Joshi, a Board-certified internist, reported that appellant's "[r]ight foot and leg hurts from yesterday after he fell down" and diagnosed contusion of right lower leg. She advised that appellant's absence from work on August 4, 2016 had been due to illness or injury.

On August 8, 2016 Dr. Joshi saw appellant for a follow-up examination and diagnosed right knee pain. She asserted that he continued to suffer from right foot and lower leg pain and indicated that his right knee had also started hurting, so he was wearing a brace. Dr. Joshi advised that appellant's absence from work on August 8, 2016 had been due to illness or injury.

In a September 14, 2016 letter, the employing establishment controverted appellant's claim on the basis that the medical evidence submitted was insufficient to establish a medical diagnosis due to the August 3, 2016 alleged incident.

By decision dated September 28, 2016, OWCP denied the claim, finding that appellant failed to establish that the injury and/or events occurred as he described, and that he sustained a diagnosed medical condition in connection with the alleged incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[3] was sustained in the performance of duty, as

[2] 5 U.S.C. § 8101 *et seq.*

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[5]

An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[6] An employee has not met his burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[7] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a prima facie case has been established.[8] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[10]

[4] *See T.H.*, 59 ECAB 388 (2008).

[5] *Id.*

[6] *See Charles B. Ward*, 38 ECAB 667 (1989).

[7] *See Tia L. Love*, 40 ECAB 586 (1989).

[8] *See Merton J. Sills*, 39 ECAB 572 (1988).

[9] *See Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[10] *Id.*

ANALYSIS

The Board finds that the weight of the evidence establishes that the employment incident of August 3, 2016 did not occur as alleged.[11] On his claim form, appellant alleged that he sustained a pulled muscle and possible ligament strain on August 3, 2016 as a result of "entering the door of the front desk of the phlebotomy area [where his] coworker had parked her scooter just inside the door." However, in a report dated August 3, 2016, a registered nurse indicated that appellant stated that he had "twisted his foot while directing a patient to leave the lab, his foot ran into the scooter." In contrast, Dr. Joshi indicated that appellant sustained an injury to his right foot and leg "after he fell down." These inconsistencies cast serious doubt on appellant's claim. The evidence of record is to establish consistent details establishing the manner in which the injury occurred, *i.e.*, whether appellant was injured while entering the door, directing a patient to leave the lab, or after he had already fallen down. For these reasons, the Board finds that appellant has not provided sufficient factual evidence to establish that he was injured in the performance of duty on August 3, 2016, as alleged. Appellant has failed to meet his burden of proof.

As appellant has not established the first component of fact of injury, it is not necessary to discuss whether he submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment exposure alleged.[12]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on August 3, 2016, as alleged.

[11] *See A.B.*, Docket No. 14-522 (issued November 9, 2015) (fact of incident not established where there was substantial inconsistency between the employee's account of events and the accounts of coworkers and supervisor with regard to the time and place of his alleged injury); *V.J.*, Docket No. 13-1460 (issued January 7, 2014) (claimed incident not established where employing establishment investigation revealed inconsistencies between the employee's account of the claimed incident and those of coworkers); *J.W.*, Docket No. 12-926 (issued October 1, 2012) (claimed incident not established where there were inconsistencies between the employee's statements and evidence at the scene of the alleged incident).

[12] *See Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997). As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board